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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,237	09/16/2003	Robert G. Dandrea	DIVA/144CIP1C1	3754
56015	7590	04/20/2006	EXAMINER	
PATTERSON & SHERIDAN, LLP/ SEDNA PATENT SERVICES, LLC 595 SHREWSBURY AVENUE SUITE 100 SHREWSBURY, NJ 07702			DOAN, DUC T	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,237

Applicant(s)

DANDREA ET AL.

Examiner

Duc T. Doan

Art Unit

2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 is/are allowed.
- 6) ☒ Claim(s) 7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set for in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/6/06 has been entered.

Claims 1-6 have been presented for examination in this application. In response to the last Office Action. Amendments were received on 3/12/06 and 4/6/06. Claims 1,4 have been amended. claims 7,9 were added, claims 8,10 were canceled. As a result, claims 1-7,9 are now pending in this application.

Claims 1-6 contain allowable subject matter.

Claims 7,9 are rejected.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 9,7 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of U.S. Patent No. 6378036. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Instant application, 10/663237; Claim 9	Patent 6378036; Claim 18
A method, comprising: assigning an access request to a new user queue, upon determining that with the new user queue selection all of a set of current steady-state queue requests will meet a predefined worst-case deadline, the new-subscriber queue being for subscribers that are beginning to view a program: assigning the access request to an other-request	A method of scheduling access requests for a plurality of disk drives associated with a video server, said method comprising the steps of: ordering said disk drives by earliest time deadline of steady-state access requests for each of said plurality of disk drives; and for each of said plurality of disk drives, providing three queues, where a first queue

queue, upon not assigning the access request to the new user queue and determining that with the other request queue selection all of the set of current steady-state queue requests will meet the predefined worst-case deadline, the other-request queue being for subscribers that are beginning to view a program; and assigning the access request to a steady-state queue, upon not assigning the access request to either the new user queue or the other-request queue and determining that with the steady-state queue selection all of the set of current steady-state queue will meet the predefined worst-case deadlines wherein the access requests in the steady-state queue are ordered by time deadline.

contains steady state access requests from users being supplied a program from the video server, a second queue contains new programming access requests and a third queue for all other types of access requests; selecting a next new programming access request, if such selection does not cause any steady-state access request to miss its associated time deadline within which that steady-state access request must be completed, to ensure that the program being viewed is not interrupted; otherwise, selecting a next other access request, if such selection does not cause any steady-state access request to miss its associated time deadline within which that steady-state access request must be completed, to ensure that the program being viewed is not interrupted; otherwise, selecting a steady-state access request with the earliest associated time deadline within which that steady-state access

	request must be completed, to ensure that the program being viewed is not interrupted; and forwarding the selected request to a disk drive of said plurality of disk drives that is associated with the selected request.

Claim 7 of the instant application recites the limitations that are anticipated by claim 18 of the US Patent 6378036.

Allowable Subject Matter

Claims 1-6 are allowable.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ma et al (US 5926649).

Agrawal et al (US 5530912).

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When responding to the office action, Applicant is advised to provide the examiner with the line numbers and page numbers in the application and/or references cited to assist examiner to locate the appropriate paragraphs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Doan whose telephone number is 571-272-4171. The examiner can normally be reached on M-F 8:00 AM 05:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 571-272-4210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DD


Mano Padmanabhan 4/14/06

Supervisory Patent Examiner

TC2188

MANO PADMANABHAN
SUPERVISORY PATENT EXAMINER